

**Committee on the Judiciary
Subcommittee on Commercial
and Administrative Law
U.S. House of Representatives**

**Hon. John V. Sullivan
Parliamentarian
U.S. House of Representatives**

March 30, 2006

**Testimony
Congressional Review Act**

Mr. Chairman; members of the committee: I appreciate the opportunity to participate in your review of this important matter.

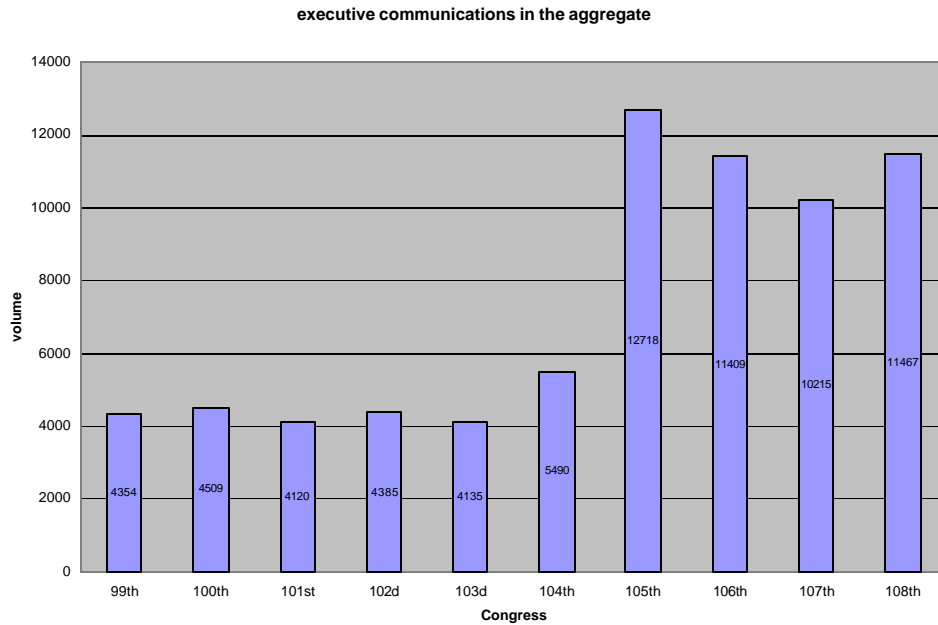
Several laws within the jurisdiction of the Committee on the Judiciary ensure that the exercise of quasi-legislative authority by the executive branch is subject to rigorous scrutiny. Some have long ensured that the public can follow and react to rulemaking actions as they develop. For 10 years now, chapter 8 of title 5, United States Code — colloquially known as the Congressional Review Act (CRA) — has separately focused on Congressional review of executive regulations. I am pleased to help illuminate one part of the factual predicate on which the Committee might judge whether the CRA is optimized to achieve its desired ends.

In the 103d Congress — the last full Congress before the enactment of the CRA — the executive departments transmitted 4,135 communications to the Speaker that warranted referral to committee.¹ In the 108th Congress — the most recent full Congress under the CRA — that number rose to 11,467.² The following pair of graphs depict the effects of the CRA on executive communications traffic.

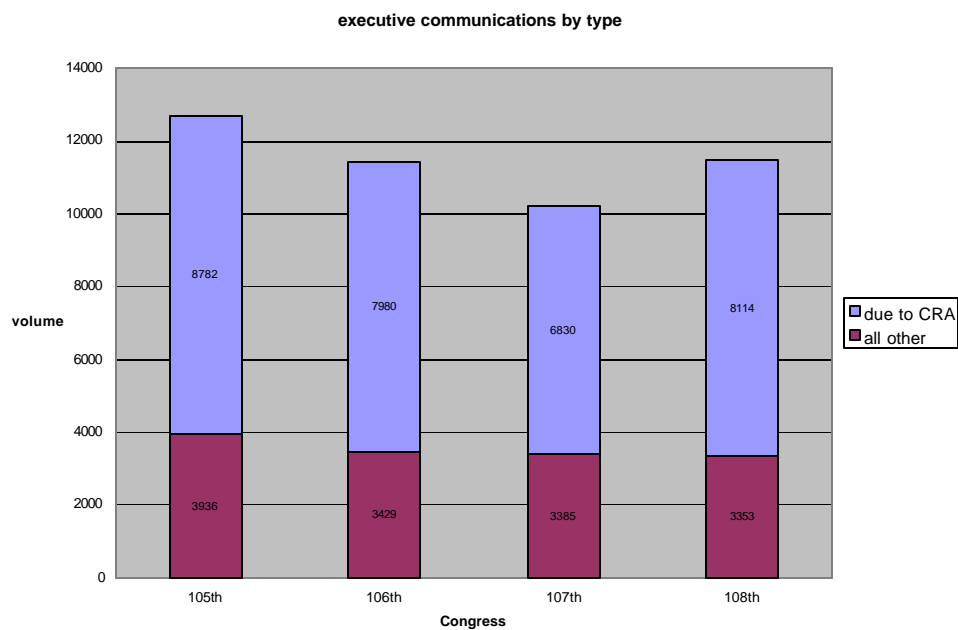
¹ See *Calendars of the United States House of Representatives and History of Legislation*, Final Edition, 108th Congress, 2003-2004, at p. 19-71.

² *Id.* at p. 19-76.

The first graph shows that executive communications have roughly tripled.



The second graph shows that, in each of the past three Congresses, the number of CRA communications has, indeed, been more than twice the number of other executive communications.



These communications transmit regulations promulgated by executive agencies for Congressional review. Under rule XII, they are received by the Speaker. Under rule XIV, the Speaker refers them to the committees having jurisdiction over their subject matters. The Speaker delegates to the Parliamentarian the task of identifying committees of referral — typically the committees having jurisdiction over the enabling statutes for the particular rulemaking actions.

This flow of paper poses a significant increment of workload. Although it is relatively easy to identify the appropriate committees of referral for the vast majority of these communications, the sheer volume of them affects not only the parliamentarians who must assess their subject matter but also the clerks who must move the paper and account for dates of transmittal. Some of the processing of this paper has been streamlined. Unlike other executive communications, multiple rules submitted by a single agency pursuant to the CRA may be bundled under a single cover letter.

Of course, this mass of paperwork has a purpose. The fundamental fulcrum of the CRA is that rulemaking agencies must submit proposed regulations to each House of Congress and to the Comptroller General and wait a statutory interval³ before major rules may be given effect. During this interval, Congress may deliberate on whether a proposed regulation might merit legislative disapproval.

In the first decade under the CRA, 21 joint resolutions of disapproval were introduced in the House and 16 were introduced in the Senate. None of the House joint resolutions passed the House. Three of the Senate joint resolutions passed the Senate. One of those also passed the House. Thus, the disapproval mechanism established by the Act has yielded one Congressional disapproval.⁴

³ Because of the need to track this interval, the date of receipt of a rule submitted pursuant to the CRA is published in the Congressional Record. With most other executive communications, only the date of referral to committee is published.

⁴ Public Law 107-5.

The Committee may want to assess whether a lesser volume of executive communications traffic might better optimize Congressional oversight of a more selective universe of rulemaking actions. The Act already differentiates among various rules on the basis of their salience. Some additional discrimination might be sensible. The Office of the Parliamentarian will be pleased to continue to consult with the Committee and its staff on initiatives to eliminate duplication of effort and reduce paperwork like those proposed in H.R. 5380 of the 106th Congress.⁵

Mr. Chairman, I am grateful for your attention and will be pleased to try to answer any questions you might have.

⁵ H.R. 5380 of the 106th Congress was introduced by Mr. Hyde (for himself, Mr. Conyers, Mr. Gekas, and Mr. Nadler) and referred to the Committee on the Judiciary. It proposed that the CRA be amended to no longer require separate submission to Congress of rules that are published in the Federal Register and to require the Comptroller General to submit weekly reports to each House of rules published in the Federal Register to the end that they be noted in the Congressional Record with a statement of referral to committee.

professional history

Parliamentarian, House of Representatives (2004 – present)
Deputy Parliamentarian, House of Representatives (1994 – 2004)
Assistant Parliamentarian, House of Representatives (1987 – 1994)
Counsel, Committee on Armed Services, House of Representatives (1984 – 1987)
Active duty, United States Air Force (1974 – 1984)

education

United States Air Force Academy (B.S., 1974)
Indiana University School of Law (J.D., 1977)

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Supreme Court of the United States (1982)
Supreme Court of Indiana (1977)
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U.S. Court of Appeals for the Armed Forces (1977)